

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 26TH DAY OF MAY 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

H.R.R.P. NO.1377/1993

Smt.Annapoorna,  
55 years,  
w/o Sri J.M.T.Rajan,  
Household work,  
No.382,I 'N' Block,  
Rajajinagar,  
Bangalore-10  
by Special Power of  
Attorney Holder  
Sri J.M.T.Rajan.

Petitioner

(By M/s Kotre Associates and  
Sri H.N.Nagamohandas)

-vs-

Vishwakalanikethan,  
No.12 and 12A,  
represented by its  
Secretary ,  
Sri Ramachandrappa,  
K.K.Railway Parallel  
Road, Bangalore-20.

Respondent

(By Sri S.K.V.Chalapathy)

This civil revision petition is filed under Section 50 (1) of the Karnataka Rent Control Act, against the order dated 20.7.1993 passed in H.R.C.No.51/83 on the file of the III Additional Judge of Small Causes, Bangalore.

This petition coming on for hearing this day, the court made the following:

ORDER

ORDER

The petitioner filed an eviction petition against the respondent on the ground that she is suffering from schizophrenia and also arthrites and she and her husband is residing in a house belonging to her son. The nature of the disease is such that the petitioner should live in an atmosphere conducive for her mental condition as she often gets irritated with her daughter-in-law, she intends to shift her residence to the schedule premises which exclusively belongs to her. The petitioner also complains that the respondent unauthorisedly without her consent, has put up a permanent structure by raising the height of the compound wall and therefore liable to be evicted under Section 21 (1) (c) of the Karnataka Rent Control Act, 1961 (for short 'the Act').

This petition was resisted by the respondent by filing a detailed statement of objection. The respondent also pleaded that he is running a Primary and a High School where there are about <sup>1090</sup>~~500~~ students studying.

The parties went to trial on the basis of the pleadings and adduced evidence. On behalf of the petitioner, her husband was examined as PW.1,

H.R.V

besides two more witnesses, out of whom one was a Doctor. Petitioner produced 12 documents most important of them being the Medical Certificate issued to prove the fact of petitioner's case. The respondent examined two witnesses, ~~in support of his case~~ and produced nine documents in support of his case; The learned Judge on appreciation of the evidence led by the parties has dismissed the eviction petition on the ground that the requirement of the petitioner to occupy the schedule premises is neither reasonable nor bonafide. This order is challenged in this revision petition.

Sri Nagamohandas, learned counsel appearing for the petitioner contended, that admittedly the petitioner and her husband are residing in the house belonging to her son, in which they have "no legal right to stay" and the petitioner having proved that she is suffering from 'Schizophrenia' and having regard to the evidence of the Doctor, the desire to occupy her "own premises" cannot be held to be unreasonable or lacking ~~any~~ <sup>in</sup> bonafides. According to him the learned Judge has misdirected himself in thinking that the petitioner can continue to stay comfortably with her son and daughter-in-law. He also submitted that the learned Judge similarly has misdirected himself in thinking

that the respondent suffer greater hardship.

Sri S.K.V.Chalapathy, learned counsel appearing for the respondent while defending the order of the learned Judge submitted that no case is made out by the petitioner as to how the place of residence at Rajajinagar is not suitable to continue to occupy. He also submitted that the present residence of the petitioner is large enough to accommodate her family. He nextly submitted that according to the evidence the petitioner is suffering from Schizophrenia from the year 1973 whereas the eviction petition was filed in 1998. This inordinate delay betrays the bonafides of the petitioner even if there is any. Lastly he submitted that in this case, the petitioner has not been examined in support of her case and non-examination has to be held that the petitioner is not serious enough to pursue her case, as held by the Supreme Court in AIR 1982 SC 1518.

I have gone through the order of the learned Judge and also the records. In order to appreciate the rival contentions of the parties the facts are briefly stated, as hereunder:

The schedule premises is built in an area of 40' x 60'. In the ground floor there is a hall, 2 bed rooms, a kitchen, a bath room and a varanda.

H.R.V

More or less the same is the accommodation in the first floor. Petitioner purchased the property in 1979.

That the petitioner by means of a settlement deed settled the property at Rajajinagar in his son's name and the said son and his wife along with the petitioner and her husband are now residing there. The premises at Rajajinagar measures  $12\frac{1}{2}$  sqs. in the ground floor and <sup>her</sup> the first floor. That the petitioner has another son and a daughter other than the one in whose favour the property was settled.

The petitioner's husband has been examined as PW.1, who has stated that the petitioner has been suffering from arthrites and "schizophrenia" she has developed a complex viz. that "her son and daughter-in-law are neglecting her" on account of which she gets upset. She is in continuous treatment since 1978 and therefore she wants to live separately from her daughter-in-law and son. According to him her son and daughter-in-law have two tendered aged children and the daughter-in-law has to spend much of her time in looking after the children and therefore she cannot devote the whole time in looking after the petitioner.

H.R.V

This evidence has been corroborated by his son who has been examined as PW.2. The Doctor who has been treating the petitioner has also been examined as PW.3. His evidence is:

"I know the petitioner, since 1976, I know her as a patient. She came to the Nursing Home as a patient of mental disease. We diaganised her as a case of schizophrenia. The effect of the disease is, occasionally she use to become aggressive and sleepless. She used to respond for certain voices which are imaginary. We treated her with electric shocks and major transquillizers. The petitioner must have atmospher where she is looked after with care, affection and love. She cannot take medicine prescribed by herself. Some body must be always be there to give medicine. Suppose the medicine is not given in the prescribed time her behaviour may flareup. If she is not taking care off I say that her sycoseis may increase. This type of

H. R. v

people some time feel that they are neglected people. If these type of people not treated there will be tension as a result of it the disease will increase. The external sounds like movement of trains will not effect her mental disease. This type of people some times become violent and withdraw from the society."

By a reading of the evidence of PWs.1 ,2 and 3 it is clear that the petitioner and her husband are residing in a house that does not belong to them and the petitioner thinks that her son and daughter-in-law are neglecting her. Under the circumstances the desire of the petitioner to live separately from her son and daughter-in-law cannot be held to be unreasonable. It is not the case of the respondent that the petitioner owns other premises suitable for her living. The finding of the learned Judge that the residential accommodation at present at Rajajinagar is suitable to accommodate the petitioner and her husband ~~cannot~~ be held to be unreasonable. It may be that

H.R.✓

the accommodattion at Rajajinagar is quite large enough to house the petitioner and her husband in terms of space but it cannot be said that it is condusive for the petitioner to live having regard to her mental condition.

The other finding of the learned Judge that eviction cannot be ordered on the basis of Govt pleadings unless there is a genuine reason, is concerned. it has to be held in this case that the petitioner is not seeking eviction on the basis of requirement to stay away from the son and daughter-in-law but on the basis of the peculiar mental disease, of her wife.

In so far as the question of comparative hardship is concerned, the learned Judge has only viewed the case from the angle of the respondent namely that he is running a school in which about <sup>1090</sup>~~500~~ students are studying and therefore they suffer greater hardship in case eviction is refused. It has to be said that the premises is a residential one which has 2 bed rooms measuring 10' x 10', a dining hall, a garage measuring 10' x 15'. More or less the same is the accommodation in the first

H.R.V



floor. It is rather difficult to believe how such an accommodation can house 1090 students. Such a mode of running the school may not be conducive for the students. One of the conditions for the Grant-in-Aid Code is that the rooms where the students sit should be of an approved size. Besides in every eviction petition there is bound to be some inconvenience the tenants suffer on account of eviction, but the same has to be weighed with reference to the hardship the landlord suffer in case eviction is refused. In this case admittedly having regard to the health of the petitioner if eviction is refused it would be virtually forcing her to live with her son<sup>'where he has no legal right to stay'</sup>. Therefore in my view the petitioner suffer greater hardship than the tenant.

On the question of partial eviction, as has been rightly held by the learned Judge this is not a case where partial eviction is feasible as the tenant would suffer greater hardship because he has to shift part of the school from the schedule premises and locate in some other place. Besides it could not serve the purpose of the petitioner if

H. R. V

the school is also allowed to run in the premises as admittedly she has been suffering from the mental disease.

In so far as the contention of the learned counsel for the tenant that non-examination of the petitioner is fatal to the case is concerned, in this case the petitioner's husband states that the petitioner's health condition is not good having regard to her mental illness. The ruling referred to has no application to the facts of the case.

Coming to another contention of the learned counsel for the tenant namely that the petitioner is suffering from the mental disease since 1979 and this petition was filed in 1983, there is a delay, it has to be stated that having regard to the nature of the disease as stated by the parties it is only when the petitioner developed prejudice against her daughter-in-law the petition was filed. Hence the delay in filing the petition cannot be considered as a factor to defeat the bonafides.

In the result, this petition is allowed.

H.R.V

Having regard to the magnitude of the problem that large number of students have to be accommodated and the difficulty to secure an alternative accommodation in a City like Bangalore the learned counsel for the tenant prayed for five years be granted to the tenant to vacate the premises. On the contrary the learned counsel for the petitioner submitted that this is not a fit case for granting time beyond 2 years. Having regard to the submissions made by the learned counsel and the difficulty of acquiring a school accommodation, the respondent-tenant is granted three and a half years time from today to quit and deliver vacant possession of the premises.

Petition allowed.

Sd/-  
JUDGE

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